

Assembly Bill No. 1858

CHAPTER 674

An act to amend Sections 22442.2 and 22445 of, and to add Section 6157.5 to, the Business and Professions Code, relating to consumer protection.

[Approved by Governor September 24, 2000. Filed
with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, Romero. Consumer protection.

(1) Under the State Bar Act, all persons admitted and licensed to practice law in this state, other than justices and judges of courts of record during their term of office, are members of the State Bar. Existing law provides for the regulation of those engaged in the practice of law, including the means by which they solicit employment of their legal services, and authorizes the State Bar to bring a disciplinary action for a violation of these provisions.

This bill would require each member of the State Bar to include in all advertisements seeking employment of the member to provide services relating to immigration and naturalization, to include a statement that he or she is a member of the State Bar, licensed to practice law in this state. This bill would require a law firm or corporation to include in these advertisements a statement that all of its legal services are provided by an active member of the State Bar or under the supervision of an active member of the State Bar. This bill would specify that those required statements be in the same language as the advertisement. This bill would exempt from these requirements advertisements in telephone and business directories, as specified, that state only the name, address, and telephone number of the entity and would additionally exempt those members employed by public agencies or by nonprofit entities registered with the Secretary of State. This bill would make a violation of these requirements cause for discipline by the State Bar.

(2) Existing law regulates the practice of immigration consultants, defined as persons who provide nonlegal assistance or advice in an immigration matter. Existing law makes a violation of these provisions punishable as a crime and also provides for a civil penalty not to exceed \$10,000 to be assessed and collected in a civil action by any person injured by a violation of the provisions that govern the practice of immigration consultants.

This bill would increase the amount of the civil penalty to \$100,000 for each violation and would require an immigration consultant to include in any advertisement for services a statement that he or she

is not an attorney, as specified. Because a failure to comply with this requirement would be punishable criminally as a violation of the provisions governing the practice of immigration consultants, this bill would expand an existing crime, thereby imposing a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6157.5 is added to the Business and Professions Code, to read:

6157.5. (a) All advertisements published, distributed, or broadcasted by or on behalf of a member seeking professional employment for the member in providing services relating to immigration or naturalization shall include a statement that he or she is an active member of the State Bar, licensed to practice law in this state. If the advertisement seeks employment for a law firm or law corporation employing more than one attorney, the advertisement shall include a statement that all the services relating to immigration and naturalization provided by the firm or corporation shall be provided by an active member of the State Bar or by a person under the supervision of an active member of the State Bar. This subdivision shall not apply to classified or “yellow pages” listings in a telephone or business directory of three lines or less that state only the name, address, and telephone number of the listed entity.

(b) If the advertisement is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement.

(c) This section shall not apply to members employed by public agencies or by nonprofit entities registered with the Secretary of State.

(d) A violation of this section by a member shall be cause for discipline by the State Bar.

SEC. 2. Section 22442.2 of the Business and Professions Code is amended to read:

22442.2. (a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 inches by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the consultant’s clientele, the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.



(2) A statement that the consultant is not an attorney.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure that shall include the immigration consultant's name, address, telephone number, agent for service of process, and evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(3) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not an active member of the State Bar of California, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement.

SEC. 3. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

